

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Request of)	
)	
AMERICAN HOSPITAL ASSOCIATION)	WP Docket No. 10-54
)	
For Blanket Waiver of Section 97.113(a)(3))	
of the Commission's Rules to Permit Hospitals)	
to use Amateur Radio as Part of Emergency)	
Preparedness Drills)	
To:		The Chief, Mobility Division, Wireless Telecommunications Bureau, and
		The Chief, Policy Division, Public Safety and Homeland Security Bureau
Via:		Office of the Secretary

**COMMENTS OF ARRL,
THE NATIONAL ASSOCIATION FOR AMATEUR RADIO**

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to the *Public Notice*, DA 10-365, released March 3, 2010 (the Notice), hereby respectfully submits its comments on the request by the American Hospital Association (AHA) for a blanket waiver of Section 97.113(a)(3) of the Commission's Rules [47 C.F.R. § 97.113(a)(3)] to permit hospitals seeking accreditation to use Amateur Radio operators who are employees of the hospitals to transmit communications on behalf of the employer hospital as part of emergency preparedness drills. The Notice was issued in response to the February 17, 2010 *Request for Blanket Waiver of Section 97.113(a)* filed by AHA. In the interests of the Amateur Radio Service in the protection of the non-commercial character of the Amateur Service, and in encouraging *bona fide* emergency preparedness and disaster relief drills and exercises, ARRL states as follows:

I. Introduction

1. ARRL does not oppose a Commission grant of the AHA blanket waiver *as the Commission characterizes it in the Notice*¹ under certain conditions. However, ARRL urges that the Commission be especially careful in granting this waiver to carefully delineate limits on the types of communications that can be provided by employees of hospitals for accreditation purposes or otherwise pursuant thereto. It is suggested that the language of AHA's waiver request includes in some respects relief not needed, inasmuch as the existing Section 97.113 of the Commission's rules already contains a great deal of flexibility in terms of the communications permitted.² In other respects, the waiver request as AHA stated it was not sufficiently specific to preclude any possible misunderstanding by Amateur Radio licensees (and hospital administrators) about what is permitted and what is not.³ The Commission's notice alleviates some, but not all of these concerns. To address this, ARRL proposes some *very specific language for this waiver*, which will, at once: (1) accommodate the specific needs of AHA and its member

¹ The Notice, at page 2, asks *inter alia* whether the Commission should "grant AHA's request for a blanket waiver of Section 97.113(a)(3) to permit amateur operators who are hospital employees to participate in emergency drills that are conducted by hospitals for accreditation purposes and that are not government-sponsored."

² For example, the first paragraph of AHA's waiver request states that AHA seeks to permit hospitals "seeking accreditation from the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) to utilize Amateur Radio operations as part of emergency preparedness drills between now and the release of a final order in response to the upcoming Notice of Proposed Rule Making...". There is nothing within Section 97.113(a) of the Commission's Rules that prohibits *per se* the use of Amateur Radio as part of emergency communications drills, whether or not for accreditation of the hospital, as long as the Amateur Radio communications are not transmitted for hire or material compensation, and as long as Amateur Radio is not used on a regular basis where those communications could be reasonably furnished by other radio services. It is only communications on behalf of hospitals by *hospital employees*, and not by volunteers, that are prohibited by Section 97.113(a)(3) of the Rules.

³ At page 2 of its waiver request, AHA states that it would advance the public interest to grant hospitals seeking accreditation "a blanket waiver that would permit the use of Amateur Radio operations during emergency drills conducted pursuant to the Joint Commission's guidelines." Without more specificity than that, it is not clear what the limits are on communications furnished by Amateur Radio other than that they would have to be done pursuant to hospital emergency drills. It is unclear whether hospitals' employees could use Amateur Radio stations to transmit business information, for example, should the waiver be granted.

hospitals; (2) permit effective and seamless emergency and disaster relief communications preparedness drills and exercises incorporating Amateur Radio; (3) protect the Amateur Service to some extent against potential commercial exploitation; and (4) protect Amateur Radio licensees who are employees of hospitals against pressure from employers to conduct inappropriate communications by means of Amateur Radio stations.

II. Background

2. The Commission's statement of the bases and purposes of the Amateur Service in Part 97 of the Commission's Rules includes as the first fundamental principle the following:

- (a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.

This incorporates two principles which seldom, but occasionally, require clarification.

The Amateur Service, by international treaty and Federal law, is an entirely non-commercial radio service in which communications cannot be furnished for any type of consideration, or to further a licensee's pecuniary interests. Those same treaties and Federal laws, however, both permit and encourage the provision by radio Amateurs of emergency and disaster relief communications. The Commission has recently stated that the Amateur Service "plays a unique and critical role when ...primary facilities are damaged, overloaded, or destroyed."⁴

⁴ See, *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119; WC Docket No. 06-63, 22 FCC Rcd. 10541, 10576, ¶ 111 (2007) as cited in *Amendment of Part 97 of the Commission's Rules Regarding Amateur Radio Service Communications During Government Disaster Drills*, Notice of Proposed Rule Making, FCC 10-45, released March 24, 2010 (the "97.113 NPRM").

3. Prior to 1993, in order to protect the essential, non-commercial character of the Amateur Service, the Commission's Rules prohibited the use of Amateur Radio communications in which *anyone* had a pecuniary interest.⁵ Since this led to confusion among licensees about what was permitted and what was not, and unreasonably restricted Amateur Radio licensees and their good-faith efforts to provide public service communications, ARRL petitioned the Commission in 1992 to relax the rules governing "business communications." In 1993, in Docket 92-136, in response to ARRL's request, the Commission relaxed the restrictions substantially, adopting the current language of Section 97.113.⁶ The reason for the change was "to give amateur operators greater flexibility to provide communications for public service projects as well as to enhance the value of the amateur service in satisfying personal communication needs."⁷ The change greatly facilitated *volunteer* Amateur Radio communications. However, there was no change at that time (or since) to the portion of the rule that prohibited communications in which the operator has a pecuniary interest, including *communications on behalf of an employer*. That clause enunciated a specific instance in which a licensee is always deemed to have a pecuniary interest. In general, therefore, communications on behalf of an employer should be prohibited *per se*. With very limited and very specific exceptions, such communications are now, and always have been expressly prohibited.

4. Section 97.113 (a)(3) of the Commission's Rules presently prohibits an employee who is an Amateur Radio licensee from providing Amateur Radio

⁵ The prior rule prohibited Amateur stations from transmitting "any communications the purpose of which is to facilitate the business and commercial affairs of any party."

⁶ See, *Amendment of Part 97 of the Commission's Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service, Report and Order*, 8 FCC Rcd. 5072 (1993).

⁷ *Id.*, 8 FCC Rcd. at 5073.

communications on behalf of his or her employer. The rule now reads *in relevant part* as follows:

§97.113 Prohibited transmissions

(a) No amateur station shall transmit:

(2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however...

(5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

The prohibition of “communications on behalf of [a licensee’s] employer” has sound policy bases. It protects the Amateur Service to some extent against commercial exploitation, and it protects employees from being subject to unreasonable pressure from an employer to use their Amateur Service licenses for purposes for which the Service was not intended.

5. However, in some cases, Amateurs who are employees of entities (such as hospitals) that might reasonably wish to engage in emergency communications planning, emergency communications exercises and drills, and training for such cannot themselves do so on behalf of their employer. Instead, they must use non-employee volunteers for the same purpose. The existing rule clearly prohibits transmissions by employees on behalf of their employers (for example, to conduct business continuity communications). However, the rules clearly permit precisely the same communications, if performed by a non-employee, *volunteer* Amateur Radio licensee, as long as such communications are not conducted on a regular basis. The rule seeks to ensure that the Amateur Service is not

misused as an inexpensive alternative to Part 90 or Part 95 land mobile communications or other radio services, and to ensure that employees who are Amateur Radio licensees are not subjected to undue pressure from employers to provide types of communications for which the Service was not intended.

6. In a *Report and Order*, FCC 06-149, 21 FCC Rcd.11643, released October 10, 2006, the Commission offered a clarification for employees of disaster relief agencies or emergency response organizations who are Amateur licensees, stating that “Section 97.113 does not prohibit amateur radio operators who are emergency personnel engaged in disaster relief from using the amateur service bands while on paid duty status. These individuals are not receiving compensation for transmitting amateur service communications; rather, they are receiving compensation for services related to their disaster relief duties and in their capacities as emergency personnel.” This, however, was not an exception to the prohibition of "communications on behalf of an employer" found at Section 97.113(a)(3). Paid emergency personnel who are licensed amateurs, and who need to employ Amateur Radio in *actual disaster relief operations* can rely on the Commission's statements that they may do so. This clarification applies only to “emergency personnel engaged in disaster relief.” It does not apply to training exercises or drills. It does not apply to employees of entities that may encounter business disruptions but which are not in the business (either for-profit or non-profit) of providing disaster relief. And it does not permit employees to provide communications on behalf of their employers.

III. The Waiver Process and the Section 97.113 NPRM

7. The Commission's recently created waiver process⁸ whereby Amateur licensees may request of the Wireless Bureau and be granted (on a case-by-case basis) a waiver to conduct communications on behalf of an employer in connection with a "government-sponsored drill or exercise" is an acknowledgement that emergency communications preparedness using Amateur Radio in some circumstances necessitates relief from the strict application of Section 97.113(a)(3). The Commission's responsiveness and attention to the needs and interests of the Amateur Service in creating this process is appreciated in the Amateur Radio community and it has been well-received and professionally administered since its inception. The Commission's staff has been encouraging and very prompt in the administration of the waiver program. However, that process is administratively cumbersome for those seeking such waivers and for the Commission's staff as well. The process is not sufficiently flexible to accommodate the needs of some entities, such as hospitals, to adequately participate in periodic, *bona fide* Amateur Radio emergency communications drills and exercises. It is cumbersome because it requires a per-event waiver filing, and because the Commission's staff has to process and grant these one at a time and analyze the need for waivers on a case-by-case basis. Sometimes the fact-based applications require additional inquiry by the Wireless Bureau staff and clarification by the applicant, which is labor-intensive and time-consuming. Since the Commission is willing to readily grant these waivers, a carefully crafted rule change is called for instead, thus to permit by rule what is now being routinely granted by individual waiver.

⁸ See the *Public Notice, Amateur Service Communications During Government Disaster Drills*, DA 09-2259, released October 20, 2009.

8. On March 24, 2010, the Commission released its *Notice of Proposed Rule Making* in WP Docket No. 10-72 (FCC 10-45), proposing to modify Section 97.113(a) of the Commission's Rules to provide that, under certain limited conditions, Amateur Radio operators may transmit messages during emergency and disaster preparedness drills, regardless of whether the operators are employees participating in the drill. The proposed exception in the *Notice of Proposed Rule Making* for employee licensees would be to provide communications for employers during government sponsored drills or exercises. However, the Commission asks for comment on whether it should permit employee operation of Amateur stations during non-government-sponsored drills and exercises as well. ARRL will submit comments in that proceeding in due course. However, for the purpose of adjudicating this waiver, it is noted that AHA seeks to permit its member hospitals to utilize Amateur Radio operations as part of emergency preparedness drills, without limiting such to government-sponsored drills and exercises. ARRL believes it necessary to include in the waiver grant the ability to permit Amateur Radio licensee-employees of hospitals to participate in *bona fide* emergency communications drills and exercises, whether or not sponsored by a government entity. ARRL's Amateur Radio Emergency Service (ARES) program, for example, sponsors at the State and local level periodic emergency communications drills and exercises. There is no reason to differentiate between ARES drills and exercises and those sponsored by, for example, a Radio Amateur Civil Emergency Service (RACES) entity acting under the auspices of a State or local office of emergency services.

IV. The Types of Communications Permitted Under the Waiver Should be Carefully Delineated, and the Waiver Granted Subject to Conditions

9. As noted above, there are very important policy justifications for a *per se* prohibition of communications made by Amateur licensees on behalf of the licensee's employer. The Commission's waiver authority, per Section 1.925 of the Commission's Rules, allows the Commission to grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) if there are unique or unusual factual circumstances in a specific case where application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. Neither of these alternative justifications is entirely or obviously applicable to the AHA request.⁹ However, it could be concluded that, if the conditions attached to the blanket waiver are very specific and limit the radio transmissions to be made by hospital employees for the benefit of the hospital to those *"necessary to participation in emergency preparedness and disaster drills that include Amateur operations for the purpose of emergency response, disaster relief or the testing and maintenance of equipment used for that purpose,"* the purposes of Section 97.113 would not be frustrated, and the public interest furthered by grant of the waiver. Such a specific limit on the waiver authority in this case would not compromise the non-

⁹ The underlying purpose of the rule would most certainly not be frustrated or ill-served by its strict application; a hospital does not need to have its own employees provide Amateur Radio communications during emergency drills and exercises: volunteer, non-employee Amateur Radio licensees could provide such communications periodically without triggering Section 97.113. For the same reason, strict application of Section 97.113 would not be inequitable or unduly burdensome. Yet, Commission policy contemplates the use of Amateur Radio during a disaster response by some employees in some capacities in a manner that might be construed to be "on behalf of an employer." It is therefore arguably in the public interest that such employees be trained adequately prior to the disaster. Thus, the strict application of the rule in this narrow instance, due to "unique or unusual factual circumstances," could be said to be contrary to the public interest.

pecuniary character of the Amateur Service, or permit an employer to pressure an employee to exploit the Amateur Service for the commercial benefit of that employer. The key is to prohibit the conduct of hospital operational, business or business restoration communications by Amateur Radio licensees who are employees of the hospital,¹⁰ but to permit and facilitate the involvement of the hospital as a key participant in *bona fide* Amateur Radio emergency and disaster relief communications drills and exercises.¹¹

10. Section 97.113 as it presently reads, in general does what the Commission intended in 1993: “to give amateur operators greater flexibility to provide communications for public service projects as well as to enhance the value of the amateur service in satisfying personal communication needs.” ARRL suggests therefore that the blanket waiver sought by AHA should be granted, but only subject to the following specific conditions: (1) the waiver is independent of, and is without prejudice to any action that might be taken in WP Docket 10-72, and will be in effect only until the time that final action is taken in that proceeding; and (2) that the transmissions made by Amateur Radio licensees pursuant to the blanket waiver be at all times limited to those “necessary to participation in emergency preparedness and disaster drills that include Amateur operations for the purpose of emergency response, disaster relief or the testing and maintenance of equipment used for that purpose,” and no other purpose.

¹⁰ ARRL is well-aware that hospital accreditation is a business function of the hospital. However, the emergency operations plan of the hospital, and the establishment of “backup communications processes and technologies” are the only elements of that accreditation that are relevant here. Therefore, Amateur Radio communications that are specifically limited to “necessary participation in emergency preparedness and disaster drills for the purpose of emergency response, disaster relief or the testing and maintenance of equipment used for that purpose” can be considered a circumstance in which the non-commercial nature of the Amateur Radio Service is not compromised.

¹¹ Advance planning by businesses and organizations for business restoration communications should normally be done with reference to Part 90 or Part 95 communications facilities. That is to be distinguished from disaster planning or emergency communications planning for the benefit of the public, which should always involve Amateur Radio as at least one component.

11. The Amateur Radio Service is ready, willing and able to provide public service, emergency and disaster communications, and it is well understood that a necessary component of that ability and readiness is the experience that comes from preparedness exercises and drills. The ultimate beneficiary of Amateur Radio communications is the public. The Service should not, however, be exploited as an inexpensive, flexible alternative to the Land Mobile Radio Service, the General Mobile Radio Service, or Commercial Mobile Radio Service facilities. ARRL considers the language set forth hereinabove a necessary and sufficient condition on the AHA waiver grant to address AHA's goals, and the needs and interests of Amateur Radio licensees, and with the two conditions set forth above, and only with those conditions, ARRL supports grant of the blanket waiver.

Therefore, the foregoing considered, ARRL, the National Association for Amateur Radio, respectfully requests that the Commission grant the proposed blanket waiver only in accordance with the conditions recommended herein.

Respectfully submitted,

ARRL, the national association for Amateur Radio

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April 2, 2010

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify that I caused to be mailed, via first class U.S. Mail, postage prepaid, a copy of the foregoing **COMMENTS OF ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO** to the following, this 2nd day of April, 2010.

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